

Exhibit 5

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 No. 5:16-cv-10444
IN RE: FLINT WATER CASES Hon. Judith E. Levy
5 Mag. Mona K. Majzoub

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7
8 HIGHLY CONFIDENTIAL
9 VIDEOTAPED DEPOSITION OF ROBERT T. NICHOLAS
10 VOLUME I
11 Monday, December 9, 2019
at 9:05 a.m.

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14 Taken at: Weitz & Luxenberg PC
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1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

3 IN RE: FLINT WATER LITIGATION Case No. 17-108646-NO
4 Hon. Richard B. Yuille

5 JENNIFER MASON, CARL ROGERS,
6 II, TERESA SPRINGER, JEFFREY
7 DUSHANE, DEBORAH CULVER,
8 DR. TRISTIN HASSEL, ADAM DILL
9 AND DAVID YEOMAN, on behalf of
10 themselves and a class of all
11 others similarly situated,
12 Plaintiffs,

Case No. 16-106150-NM
Hon. Richard B. Yuille

10 vs.

11 LOCKWOOD, ANDREWS & NEWNAM, PC,
12 a Michigan corporation, and
13 LOCKWOOD, ANDREWS & NEWMAN,
14 INC., a Texas corporation, and
15 LEO A. DALY COMPANY, a Nebraska
16 corporation, ROWE PROFESSIONAL
17 SERVICES COMPANY f/k/a ROWE
18 ENGINEERING, INC., a Michigan
19 corporation, VEOLIA NORTH
20 AMERICA, LLC, a Delaware
21 limited liability company,
22 VEOLIA NORTH AMERICAN, INC., a
23 Delaware corporation, VEOLIA
24 WATER NORTH AMERICA OPERATING
SERVICES, LLC, a Delaware
limited liability company
and VEOLIA ENVIRONMENT S.A.,
a transnational corporation,

Defendants.

A P P E A R A N C E S

- - -

On behalf of the Class Plaintiffs:

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1 A P P E A R A N C E S (CONT'D)

2 - - -

3 On behalf of Defendants Veolia Water North America
4 Operating Services, LLC, Veolia North America, LLC, and
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1 A P P E A R A N C E S (CONT'D)

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38 ALSO PRESENT:

39 Marc Myers, Videographer

40

41 - - -

1 mean by "duty." We had a responsibility to
2 write a report and provide our findings to them.

3 Q. When you are performing work for a
4 client at Veolia, do you do your best to provide
5 candid advice to your clients?

6 A. Yes. We do our best to provide
7 the best advice possible.

8 Q. Do you think it's important to be
9 candid with your clients?

10 A. I think it's important to give
11 them good information, yes.

12 Q. When you are issuing public
13 statements about your work, do you believe you
14 have a duty to be truthful?

15 A. Yes, I do.

16 Q. If you were aware of potential
17 issues or risks to a water system and you're
18 making statements to the public, do you agree
19 that it's important to be candid about potential
20 risks?

21 MR. MCELVAINE: Objection.

22 You can answer.

23 A. If we knew there was a risk and it
24 was documented, yes.

1 meeting open to the public in which you
2 presented the findings of the interim water
3 quality report?

4 A. That was a public meeting.

5 Q. So the city council public works
6 committee meeting was a meeting open to the
7 public?

8 A. That's correct.

9 Q. Where did it happen?

10 A. It was in I think the top floor of
11 city hall. It was outside the council chambers.

12 Q. Okay. And about how many people
13 attended?

14 A. I don't know. It was probably a
15 room this big, and it was filled.

16 Q. So dozens of people at least?

17 A. I would say there were more than a
18 dozen people there, yes.

19 Q. Were there 100 people there?

20 A. I don't think there was 100 people
21 there.

22 Q. Okay. You understand that the
23 press covered the meeting, right?

24 A. Yes, I understand they did.

1 Q. You understand the press provided
2 coverage of a lot of the work that Veolia did
3 for the city of Flint, correct?

4 A. Yes, I'm aware. They wanted to
5 make it a transparent process.

6 Q. You know the reports were
7 published and available to the public?

8 A. Yes.

9 Q. You know that reporters quoted you
10 and your colleagues at Veolia regarding findings
11 associated with the Flint water supply, correct?

12 A. They may have. I certainly didn't
13 read all the news press, but that wouldn't
14 surprise me.

15 Q. You were sent summary recaps of
16 all the different articles written about
17 Veolia's work in Flint; were you not?

18 MR. MCELVAINE: Objection.

19 You can answer.

20 A. I don't know that I remember that.
21 I mean, I'm not saying it didn't. But, yeah, we
22 probably did because we had a news clip service
23 that did that sort of stuff. It's just not
24 something that pops into my mind.

1 Q. You remember that the statements
2 that you made to the public and the reports that
3 were made public were generally covered by the
4 press?

5 A. Yes.

6 Q. So you made statements with the
7 intent that the public would hear them, correct?

8 MR. MCELVAINE: Objection.

9 You can answer.

10 A. Yes.

11 Q. You understood it was important to
12 provide accurate information to the public in
13 Flint about the water quality in Flint, right?

14 A. Yes.

15 Q. You knew that statements you made
16 about the water quality in Flint could influence
17 whether the public would actually consume the
18 water, right?

19 A. Yes.

20 Q. You understand that it was very
21 important to know if the water was safe to drink
22 or not to the people of Flint at that time in
23 February 2015, correct?

24 MR. MCELVAINE: Objection.

1 You can answer.

2 A. Yes.

3 Q. You understand that the public was
4 relying on you as a water quality expert to let
5 them know if the water was safe to drink or not,
6 right?

7 MR. MCELVAINE: Objection.

8 You can answer.

9 A. I'm not the water quality expert.
10 They were relying on Veolia to provide that.

11 Q. Yeah, but you were the one that
12 wrote the report, right?

13 A. No. I'm the one that drafted the
14 report. Multiple people were involved in the
15 report of putting the details in, such as the
16 technical people looking at it and the
17 communications people.

18 Q. Okay. I'm handing you what I'd
19 like marked as the next exhibit.

20 - - -

21 (Nicholas Deposition Exhibit 12 marked.)

22 - - -

23 BY MR. CONNORS:

24 Q. Exhibit 12 is Bates-labeled

1 Q. You don't remember who had that
2 idea?

3 A. No. But I remember the discussion
4 of "We're in compliance with that. Do we only
5 want to show a problem?"

6 Q. Okay. So in January 2015, the
7 city of Flint issues an RFP asking for a water
8 quality consultant, correct?

9 A. Correct.

10 Q. Veolia won that work and entered
11 into a contract with the city of Flint to be
12 that consultant, correct?

13 A. Correct.

14 Q. During the course of that work,
15 Veolia issued reports to the city of Flint and
16 the public, correct?

17 A. Correct.

18 Q. And in those reports, Veolia
19 didn't even mention the term "lead," let alone
20 the potential risks from lead in the Flint water
21 system, correct?

22 A. Correct.

23 Q. And during this time, you were
24 aware that lead could be a problem in the Flint

1 water system, weren't you?

2 MR. MCELVAINE: Objection.

3 You can answer.

4 A. There were some lead tests that
5 came back from one of the schools that came to
6 the city. I passed that on to Mr. Gnagy so that
7 Mr. Gnagy could give us a technical opinion and
8 an evaluation of what that meant.

9 Q. So the answer is yes?

10 MR. MCELVAINE: Objection.

11 You can answer.

12 A. Yes. We passed on that
13 information for technical review.

14 Q. Okay. So if you were aware that
15 lead could be a problem in the Flint water
16 system in February of 2015, why didn't you
17 include a mention of lead in the water quality
18 report that Veolia did for the city of Flint?

19 MR. MCELVAINE: Objection.

20 You can answer.

21 A. Again, I don't know that lead was
22 a problem. What I did is we passed on those
23 test results to the technical team for them to
24 review and make that decision.

1 not Mr. Gadis. And so what I said is I agree
2 with this transcript, "Well, the water is safe
3 from the standpoint of all testing and
4 chemicals."

5 So I'm referencing the fact that
6 it passed its compliance and regulatory testing.
7 And I would agree with that statement in this
8 transcript.

9 Q. Okay. But to be clear, you used
10 the term "the water is safe," right?

11 MR. MCELVAINE: Objection.

12 You can answer.

13 A. The water is safe from the
14 standpoint of the testing and chemicals that are
15 put in there. So I'm referencing -- I'm
16 referencing this safe relates to the -- it
17 passed the regulatory test.

18 Q. Okay. And you understand that the
19 people in Flint as of February 18, 2015 were
20 very eager to know whether their water was safe
21 or not, right?

22 A. Yes.

23 Q. And this is in response to a
24 person in the crowd who asked you to put it into

1 layman's terms, right?

2 A. Yes.

3 Q. And you did use the phrase "the
4 water is safe," right?

5 MR. MCELVAINE: Objection.

6 A. I'm sorry. I did it in context of
7 the water was safe from the standpoint of the
8 testing and chemicals that are put in there.

9 Q. Okay. So nine days before that,
10 you said, "Lead could be a problem based on the
11 water," right?

12 A. As a non-technical person, any
13 positive test of the water would be a concern
14 for me, and I sent it to our technical people to
15 review.

16 Q. Okay. You're a non-technical
17 person, but you're the person who stood up
18 before the people in Flint and said, "Your water
19 is safe," right?

20 MR. MCELVAINE: Objection.

21 A. Again, I said that the water was
22 in compliance with the Safe Drinking Water Act
23 regulations.

24 Q. And you said, "The water is safe"?

1 MR. MCELVAINE: Objection.

2 A. Safe in accordance with the
3 testing.

4 Q. Okay.

5 A. I'm in agreement with the
6 transcript.

7 Q. Okay. You also say, "Part of what
8 we will do is look at the water quality testing
9 and results for lots of different variables" in
10 Exhibit 16, correct?

11 A. Correct.

12 Q. But Veolia didn't do that, right?

13 MR. MCELVAINE: Objection.

14 A. No. As we talked about in the
15 February report and we talked about in the final
16 report, we looked at corrosion. We looked at
17 bromate. We looked at different things in the
18 water to make sure, and that's how we came to
19 the conclusion that corrosion control was needed
20 and other changes.

21 Q. You didn't say in your report that
22 corrosion control was needed, did you?

23 MR. MCELVAINE: Objection.

24 A. We added in the report that they